COUNCIL AGENDA: 6-3-14 ITEM: 2,29



Memorandum

TO: HONORABLE MAYOR AND

CITY COUNCIL

FROM:

Councilmember Ash Kalra

Councilmember Kansen Chu Councilmember Donald Rocha

SUBJECT: SEE BELOW

DATE:

May 30, 2014

Approved

Date

5/30/14

SUBJECT: ELECTRONIC CIGARETTE REGULATION

RECOMMENDATION

Accept staff report to adopt a resolution amending City Council Policy 9-9 titled "Smoking Policy for any Building Owned, Leased or Occupied by the City" to revise the definition of smoking to include Electronic Cigarettes (e-cigarettes). Request that staff return in August with a report to adopt language used in the Council Policy 9-9 to amend Chapter 9.44 of Title 9 of the San Jose Municipal Code as follows:

9.44.022 Smoke or smoking.

"Smoking" is defined as either (1) inhaling, exhaling, burning, or carrying a lighted cigarette, cigar, pipe or other apparatus used to smoke tobacco or any other organic or non-organic material; or (2) the use of an electronic cigarette as defined in California Health & Safety Code Section 119405 ("e-cigarette") or a similar device intended to emulate smoking which permits a person to inhale vapors or mists that may or may not include nicotine.

9.44.040 Exceptions

B. Retail tobacco and vape stores which sell primarily tobacco products and vape products.

BACKGROUND

We would like to thank City staff for working diligently to administratively update Council Policy 9-9 to prohibit the use of electronic cigarettes on all City properties. We would hope that staff is comfortable in their analysis and update, and would like to urge Council move forward to utilize the same language to amend Title 9 of the Municipal Code to simply include electronic cigarettes in the definition of smoking. This one change will apply the same rules to electronic cigarettes as it applies to all other smoking instruments and, thereby, would include all municipal facilities, venues and parks.

Over half a century ago, tobacco companies used mass marketing and lobbying influence to market their deadly products to the masses. The most vulnerable among us, our children, were a key demographic the industry ruthlessly targeted. Times have changed and, thanks to decades of advocacy, regulation and legislation, we have witnessed historic lows in adult rates of smoking in California. Now, a new tobacco delivery device has entered the market that purports to be a

safer, cleaner way to smoke. The reality is that there is no safe way to smoke. And, although there is limited research on the impact of secondary electronic smoke, the tests show that it is certainly not simply vapor being emitted from the devices. The aerosol released contains many toxins and causes a nuisance to those nearby. It is true that more research is required to understand the comprehensive effect of electronic cigarettes. However, until the scientific community has proven that the health risks are negligible, we are not going to simply take the word of an industry that is marketing a variety of flavors uniquely attractive to children and teenagers and that out these devices as a way to get around "pesky" no smoking laws. It is time for us to take a simple action to join more than a hundred cities, counties and school districts in restricting the use of these devices.

For example, in April of 2014, the City of Chicago successfully amended its longstanding smoking ordinance by incorporating the *Chicago Clean Indoor Air Act*. This updated smoking regulations to include e-cigarettes in the law. Chicago was the first of the 20 largest U.S. cities to propose legislation to include e-cigarettes in their clean indoor air law. Following Chicago's lead, New York, Los Angeles and San Francisco also introduced legislation to add e-cigarettes to their smoke free laws. To date, more than 100 jurisdictions in the U.S. prohibit the use of e-cigarettes in areas where smoking combustible cigarettes is not allowed. Our suggestion would also follow Chicago's lead and provide for a limited exception to retail outlets where primarily tobacco or vape products are sold in order to limit the negative impacts on some of the small businesses in which customers voluntarily assume the risk of negative impacts.

On May 16, the County of Santa Clara's Health and Hospital Committee accepted a staff report and forwarded a recommendation on to the full Board of Supervisors to approve changes to existing county ordinances relating to the regulation of electronic smoking devices in the County unincorporated areas (the report and a summary of the changes is attached). It will be voted on by the Board on June 10.

Attached are the County's legislative findings detailing health concerns associated to electronic cigarettes and the City of Chicago's electronic cigarette ordinance.

County of Santa Clara Public Health Department

Administration 976 Lenzen Avenue, 2nd Floor San José, CA 95126 408.792.5040



The Public Health Department submits the following findings of fact for the Board's consideration and adoption in support of regulation of the use and sale of electronic smoking devices.

Ordinance No. NS-625.7 (General Restrictions on the Use of Tobacco Products and Electronic Smoking Devices) and Ordinance No. NS-625.8 (Restrictions on the Use of Tobacco Products and Electronic Smoking Devices in Multi-Unit Residences)

- 1. Electronic smoking devices—commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems"—are electronic and/or battery-operated devices designed to deliver nicotine, flavor, and/or other substances in an aerosol or vapor form inhaled by the user. i
- 2. Electronic smoking devices are often designed to look like and be used in the same manner as conventional cigarettes. ii
- 3. Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.ⁱⁱⁱ
- 4. Between 2010 and 2011, adult awareness of electronic smoking devices increased significantly, and the percentage of adults in the United States who had ever used an electronic cigarette approximately doubled.^{iv}
- 5. Use of electronic smoking devices by youth has increased significantly in recent years, as evidenced by findings from the 2011 and 2012 National Youth Tobacco Survey^v:
 - Between 2011 and 2012, the percentage of all students in grades 6 to 12 who had ever tried an electronic smoking device doubled from 3.3% to 6.8%. 9.3 percent of these students reported in 2012 that they had never smoked conventional cigarettes.
 - Between 2011 and 2012, the percentage of all high school students who had ever tried an electronic smoking device more than doubled from 4.7% to 10.0%.
 - 7.2 percent of these students reported in 2012 that they had never smoked conventional cigarettes.
- 6. The U.S. Surgeon General has found that the chemical nicotine is a powerful pharmacologic agent that acts in the brain and throughout the body and is highly addictive and that the use of nicotine may cause or contribute to cardiovascular disease, complications of hypertension, reproductive disorders, cancer, and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux.^{vi}
- 7. The immediate adverse physiologic effects from short-term use of electronic cigarettes are similar to some of the effects seen with tobacco smoke. vii
- 8. Nicotine is particularly hazardous to children, young people, pregnant women, nursing mothers, people with heart conditions and the elderly. viii

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian County Executive: Jeffrey V. Smith

- 9. Use of electronic smoking devices, including the refillable nicotine cartridges, can pose a risk for nicotine poisoning (e.g., if a child of 30 kilograms of weight swallows the contents of a nicotine cartridge of 24 milligrams, this could cause acute nicotine poisoning that most likely would result in death). ix
- 10. A CDC study found the number of calls to poison centers involving e-cigarettes or the nicotine liquids used in e-cigarettes rose from one per month in September 2010 to 215 per month in February 2014. The study also found:
 - More than half (51.1 percent) of the calls to poison centers due to electronic smoking devices involved young children 5 years and under, and about 42 percent of the calls involved people age 20 and older.
 - The number of calls per month involving conventional cigarettes did not show a similar increase during the same time period.
- 11. Poisoning from conventional cigarettes is generally due to young children eating them. Poisoning related to electronic smoking devices involves the liquid containing nicotine used in the devices and can occur in three ways: by ingestion, inhalation or absorption through the skin or eyes. xi
- 12. Because there is little control or regulation of electronic smoking devices products, the amount of nicotine inhaled with each "puff" may vary substantially, and testing of sample cartridges found that some labeled as nicotine-free in fact had low levels of nicotine.^{xii}
- 13. A study published in the European Respiratory Journal found that electronic smoking device users get as much nicotine from electronic smoking devices as smokers usually get from tobacco cigarettes. xiii
- 14. Electronic smoking devices have been marketed as smoking cessation devices and as safer alternatives to traditional tobacco products^{xiv}, but studies on electronic smoking devices' emissions and cartridge contents have found a number of dangerous substances including:
 - Chemicals known to the State of California to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; xv,xvi,xvii
 - Fine particulate matter (PM_{2.5}), acrolein, tin, toluene, and aluminum^{xviii, xix,xx}—which are associated with a range of negative health effects such as skin, eye, and respiratory irritation^{xxi}; neurological effects, developmental and reproductive effects^{xxii}; and even premature death from heart attacks and stroke.^{xxiii}
- 15. Studies have shown that there are high levels of dual use among users of electronic smoking devices and conventional cigarettes. xxiv,xxv,xxvi, xxvii
- 16. Neither federal nor state law requires that electronic smoking devices carry health warnings comparable to conventional cigarettes nor FDA-approved nicotine replacement products. **xxviii**
- 17. Studies on electronic smoking devices have also found inconsistent labeling of nicotine levels in electronic smoking device products. xxix,xxx
- 18. Over 400 brands of electronic smoking devices exist on the market xxxi, but clinical studies about the safety and efficacy of these products have not been submitted to the FDA. For this reason, consumers currently have no way of knowing xxxii:
 - Whether electronic smoking devices are safe for their intended use;
 - What types or concentrations of potentially harmful chemicals the products contain; and
 - What dose of nicotine the products deliver.

- 19. The World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are "deemed safe and effective and of acceptable quality by a competent national regulatory body."
- 20. The World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established." xxxiv
- 21. Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack. xxxv
- 22. Chemicals identified in electronic smoking device aerosol also appear on California's Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. The compounds that have already been identified in electronic smoking device aerosol include: Acetaldehyde, Cadmium, Formaldehyde, Lead, Nickel, Nicotine, N-Nitrosonornicotine, and Toluene. **xxxvi**
- 23. Electronic smoking devices contain and emit propylene glycol, a chemical that is used as a base in electronic smoking device solution and is one of the primary components in the aerosol emitted by electronic smoking devices. xxxvii
- 24. Even though propylene glycol is FDA approved for use in some products, the inhalation of vaporized nicotine in propylene glycol is not. Some studies show that heating propylene glycol changes its chemical composition, producing small amounts of propylene oxide, a known carcinogen. **xxviii**
- 25. One study found metals in electronic smoking device aerosol, including chromium, nickel, and tin nanoparticles. **xxxix**
- 26. FDA scientists found detectable levels of carcinogenic tobacco-specific nitrosamines in electronic smoking device aerosol.^{xl}
- 27. People exposed to electronic smoking device aerosol absorb nicotine (measured as cotinine), with one study showing levels comparable to passive smokers. xli
- 28. In the case of e-cigarettes, the solvent of the liquids may remain on available surfaces and be a source for contamination for non-users of e-cigarettes. The accidental spilling of e-cigarette liquids can also lead to unintended uptake of nicotine by skin permeation an effect that is intentionally used for nicotine patches. xliii
- 29. More than one study has concluded that use of electronic smoking devices may result in secondhand exposure to emissions. Therefore, the adverse health effects of secondhand exposure to aerosol from electronic smoking devices cannot be excluded as a possibility.
- 30. The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of electronic smoking devices in all areas where other tobacco products are banned." xlvi
- 31. An April 2014 Congressional Report investigating the marketing practices of nine of the largest electronic cigarette manufacturers, found the following xlvii:
 - All nine of the companies used various marketing practices to appeal to youth;
 - Six electronic smoking device companies market electronic smoking devices in flavors that could appeal to children and teens, with flavors like Cherry Crush, Chocolate Treat, Peachy Keen, and Grape Mint;

- These practices, many of which were self-reported by the companies, include sponsoring youth-oriented events such as music festivals, and handing out free product samples at as many as 348 events between 2012-2013.
- 32. One study examining the marketing claims featured on 59 single brand electronic smoking device retail websites that were online in 2012 found the following adviii:
 - 95% of websites made health benefit claims such as statements about the absence of "tar" or "carcinogens" in the products;
 - 22% of websites featured pictorial and video representations of doctors;
 - 88% of websites made statements that electronic smoking devices can be smoked anywhere; and
 - 71% of websites made statements that they can be used to circumvent smoke-free laws.
- 33. A study published in the *Journal of Environmental and Public Health* suggests that electronic smoking devices and other emerging tobacco products "may have the capacity to 'renormalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously." skix
- 34. The use of electronic smoking devices in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.¹
- 35. Dozens of local jurisdictions within California regulate the use of electronic smoking devices in specific locations. ^{li}
- 36. The U.S. Food and Drug Administration has proposed regulations on electronic cigarettes based on an extensive set of findings, hereby incorporated by reference, including but not limited to findings about the addictive nature of nicotine, the impact of nicotine on youth and young adults, the potential health risks of e-cigarettes, and consumer confusion and misinformation about e-cigarettes. lii

Ordinance No. NS-300.874 (Permits for Retailers of Tobacco Products and/or Electronic Smoking Devices)

- 1. The failure of retailers to comply with laws concerning tobacco products and electronic smoking devices, particularly the sale of such products to minors, threatens the health, safety and welfare of the residents of the County.
- 2. A local permitting system for retailers of tobacco products and/or electronic smoking devices is appropriate to ensure that retailers comply with all applicable laws and business standards of the County and to protect the health, safety and welfare of the residents of the County.
- 3. The California Legislature has recognized the danger of electronic smoking devices by prohibiting the sale or furnishing of electronic cigarettes to minors (Health and Safety Code Section 119405). However, this law does not prohibit self-service displays of electronic smoking devices in stores, which is the law for traditional tobacco products.
- 4. A requirement for face-to-face transactions (i.e., no vending machines sales or self-service displays) are a proven strategy for reducing minors' access to tobacco products, as they require assistance from the store merchant, and prevent shoplifting of tobacco products. liii,liv

- 5. The California Tobacco Control Program's "Healthy Stores for a Healthy Community" tobacco retailer observation survey, conducted in 2013 throughout California, including Santa Clara County, found the following:
 - The number of tobacco retailers selling electronic smoking devices in California has quadrupled in just two years (11% in 2011 to more than 45% in 2013, which is almost 16,500 stores):^{Iv}
 - As of July 2013, 47% of tobacco retailers in the County are also selling electronic smoking devices (approximately 677 stores across the county), and that number is predicted to be even higher now given the growing market for these products; lvi and
 - Nearly 20% of tobacco retailers selling electronic smoking devices in the County had electronic smoking devices on display in locations where youth are likely to be exposed to the products, such as near candy, ice cream, and slushie machines. Viii
- 6. Use of electronic smoking devices by minors has increased significantly in recent years, as evidenced by findings from the 2011 and 2012 National Youth Tobacco Survey^{lviii}:
 - Between 2011 and 2012, the percentage of all students in grades 6 to 12 who had ever tried an electronic smoking device doubled from 3.3% to 6.8%. 9.3 percent of these students reported in 2012 that they had never smoked conventional cigarettes.
 - Between 2011 and 2012, the percentage of all high school students who had ever tried an electronic smoking device more than doubled from 4.7% to 10.0%.
 - 7.2 percent of these students reported in 2012 that they had never smoked conventional cigarettes.
- 7. Both the U.S. Food and Drug Administration and the World Medical Association have expressed concern that electronic cigarettes can increase nicotine addiction among young people and lead young people to try other tobacco products, including conventional cigarettes. lix,lx
- 8. The U.S. Food and Drug Administration has proposed regulations on electronic cigarettes based on an extensive set of findings, hereby incorporated by reference, including but not limited to findings about the addictive nature of nicotine; the impact of nicotine on youth and young adults; the potential health risks of e-cigarettes; consumer confusion and misinformation about e-cigarettes; and the need for vending machine restrictions, health warnings and other regulations. lxi
- 9. The U.S. Surgeon General has found that the chemical nicotine is a powerful pharmacologic agent that acts in the brain and throughout the body and is highly addictive and that the use of nicotine may cause or contribute to cardiovascular disease, complications of hypertension, reproductive disorders, cancer, and gastrointestinal disorders, including peptic ulcer disease and gastro esophageal reflux. Ixiii
- 10. The immediate adverse physiologic effects from short-term use of electronic cigarettes are similar to some of the effects seen with tobacco smoke. lxiii
- 11. Nicotine is particularly hazardous to children, young people, pregnant women, nursing mothers, people with heart conditions and the elderly. lxiv
- 12. Use of electronic smoking devices, including the refillable nicotine cartridges, can pose a risk for nicotine poisoning (i.e. if a child of 30 Kilos of weight swallows the contents of a nicotine cartridge of 24 mg this could cause acute nicotine poisoning that most likely would cause death). lxv

- 13. A CDC study found the number of calls to poison centers involving e-cigarettes or the nicotine liquids used in e-cigarettes rose from one per month in September 2010 to 215 per month in February 2014. The study also found:
 - More than half (51.1 percent) of the calls to poison centers due to electronic smoking devices involved young children 5 years and under, and about 42 percent of the poison calls involved people age 20 and older.
 - The number of calls per month involving conventional cigarettes did not show a similar increase during the same time period.
- 14. Poisoning from conventional cigarettes is generally due to young children eating them. Poisoning related to electronic smoking devices involves the liquid containing nicotine used in the devices and can occur in three ways: by ingestion, inhalation or absorption through the skin or eyes. lxvii
- 15. State law explicitly permits cities and counties to enact local ordinances regulating the distribution of electronic cigarettes in a manner that is more restrictive than state law, to the extent not otherwise prohibited by federal law. (Health and Saf. Code, § 119405, subd. (d).)
- 16. An April 2014 Congressional Report investigating the marketing practices of nine of the largest electronic cigarette manufacturers, found the following laviii:
 - a. All nine of the companies were using various marketing practices to appeal to youth;
 - b. Six electronic smoking device companies market electronic smoking devices in flavors that could appeal to children and teens, with flavors like Cherry Crush, Chocolate Treat, Peachy Keen, and Grape Mint;
 - c. These practices, many of which were self-reported by the companies, include sponsoring youth-oriented events such as music festivals, and handing out free product samples at as many as 348 events between 2012-2013.
- 17. Dozens of cities and counties in California have passed retailer licensing ordinances in an effort to stop minors from accessing tobacco products and electronic smoking devices. lxix
- 18. A requirement for a retailer permit will not unduly burden legitimate business activities of retailers who sell or distribute tobacco products or electronic smoking devices to adults but will allow the County to regulate the operation of lawful businesses to discourage violations of federal, state and local laws related to tobacco products and electronic smoking devices.
- 19. The County has a substantial interest in promoting compliance with federal, state and local laws intended to regulate sales and use of tobacco products and electronic smoking devices; in discouraging the illegal purchase of tobacco products and electronic smoking devices by minors; in promoting compliance with laws prohibiting sales of tobacco products and electronic smoking devices to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

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^v Corey, C., Johnson, S., Apelberg, B., et al. (2013). "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students - United States, 2011-2012." *Morbidity and Mortality Weekly Report (MMWR)*. 62(35):729–730. Available at: http://www.cdc.gov/mmwr/preview/mmwr/html/mm6235a6.htm.

vi The Health Consequences of Smoking: Nicotine Addiction, a report of the Surgeon General (1988), available at http://profiles.nlm.nih.gov/ps/access/NNBBZD.pdf

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viii World Health Organization. Statement: Questions and answers on electronic cigarettes or electronic nicotine delivery systems, July 2013. Available at: http://www.who.int/tobacco/communications/statements/eletronic_cigarettes/en/ ix World Health Organization. Statement: Questions and answers on electronic cigarettes or electronic nicotine delivery systems, July 2013. Available at: http://www.who.int/tobacco/communications/statements/eletronic_cigarettes/en/ x Chatham-Stephens, K, Law, R, Taylor, E, et al. (April 2014). "Notes from the Field: Calls to Poison Centers for Exposures to Electronic Cigarettes — United States, September 2010—February 2014" Morbidity and Mortality Weekly Report

xi CDC, April 3, 2014 Press Release: "New CDC study finds increase in e-cigarette-related calls to poison centers".

Available at: http://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html

xii FDA and Public Health Experts Warn about Electronic Cigarettes (July 22, 2009), available at www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

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xiv Grana, R and Ling, P M. (2014). "Smoking revolution: A content analysis of electronic cigarette retail websites. Am J Prev Med 46(4): 395-403.

xv German Cancer Research Center. (2013). "Electronic Cigarettes - An Overview" Red Series Tobacco Prevention and Control. Available at: www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_ecigarettes an overview.pdf.

^{xvi} Goniewicz, M.L.; Knysak, J.; Gawron, M.; Kosmider, L.; Sobczak, A.; Kurek, J.; Prokopowicz, A.; Jablonska-Czapla, M.; Rosik-Dulewska, C.; Havel, C.; Jacob, P.; Benowitz, N., "Levels of selected carcinogens and toxicants in vapour from electronic cigarettes," Tobacco Control, March 6, 2013.

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xxi Agency for Toxic Substances and Disease Registery (ATSDR). (2008). Toxic Substances Portal. Available at http://www.atsdr.cdc.gov/substances/index.asp

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City of Chicago



SO2013-6160

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

9/11/2013

Sponsor(s):

Burke (14)

Type:

Burns (4) Ordinance

Title:

Amendment of Municipal Code Chapter 4-64 to prohibit

distribution and sale of alternative nicotine products to

minors....

Committee(s) Assignment:

Joint Committee: Finance; Health and Environmental

Protection

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New

SUBSTITUTE ORDINANCE

WHEREAS, The City of Chicago is a home rule unit of government pursuant to Article VII, Section 6(a) of the Illinois Constitution; and

WHEREAS, Pursuant to its home rule authority, the City of Chicago may exercise any power and perform any function pertaining to its government and affairs, including promoting the health, safety, and welfare of its citizens; and

WHEREAS, Cigarette smoking has been linked to various cancers and lung diseases; and

WHEREAS, While many struggle with their nicotine and tobacco addiction, those seeking to quit their "habit" have sought several modes of treatment: medicine from their doctors, nicotine patches, and, in recent years, e-cigarettes; and

WHEREAS, E-cigarettes, which first entered the United States market in 2007, are electronic inhalers meant to simulate cigarette smoking. E-cigarettes use a heating element that vaporizes a liquid solution. Some e-cigarettes release nicotine, while some merely release flavored vapor. They are designed to mimic traditional smoking implements in their use and appearance; and

WHEREAS, Though e-cigarettes have been advertised as a "safe" alternative to smoking, they are not currently regulated by the United States Food and Drug Administration (FDA), leaving states and cities to adopt their own regulations; and

WHEREAS, Several states, including Illinois, have adopted legislation banning the sale of ecigarettes to minors; and

WHEREAS, The Center for Disease Control and Prevention (CDC), in a report released on September 5, 2013, stated that ten percent of high school students surveyed reported using ecigarettes in 2012, up from 4.7 percent in 2011; and

WHEREAS, In the same study, the CDC reported that these same minors also admitted to smoking conventional cigarettes at the same time; and

WHEREAS, CDC Director Tom Frieden, M.D., M.P.H., has stated that the "increased use of ecigarettes by teens is deeply troubling. Nicotine is a highly addictive drug. Many teens who start with ecigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."; and

WHEREAS, According to Tim McAfee, M.D., M.P.H., the Director of the CDC Office on Smoking and Health, "it should be the goal of all to protect the health of our youth and to keep them from experimenting or using any tobacco product. These dramatic increases in usage suggest that developing strategies to prevent marketing, sales, and use of e-cigarettes among youth is critical."; and

WHEREAS, The City of Chicago finds that e-cigarettes, with their sweet flavored cartridges, represent a calculated attempt by manufacturers to entice children and young adults to purchase and use their devices, and constitute an indirect marketing campaign which targets youth; and

WHEREAS, The City of Chicago finds that the public health and safety of its citizens, particularly its children, is endangered by the lack of comprehensive regulation of e-cigarettes; and

WHEREAS, Regulation of the distribution, sale, and use of e-cigarettes is a legitimate role of government relating to the welfare of its citizens; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4-64-091 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-091 Tobacco products-product defined.

As used in this chapter:

"Tobacco products" means any substance containing tobacco leaf, including but not limited to eigarettes, cigars, smoking tobacco, and/or smokeless tobacco.

"Tobacco product" means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means

For purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

SECTION 2. Section 4-64-131 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-131 Tobacco products-vending machines self-service displays - Prohibited.

No person shall engage in the business of a retail tobacco dealer using a cigarette-vending machine-self-service display

For the purpose of this section, "cigarette-vending machine" means any mechanical device used for retail sales of tobacco-products, the operation of which is governed or controlled by use of currency, a coin, a token, or credit or debit card-"self-service display" means the open display or storage of tobacco-products in a manner that is physically accessible in any way to a member of the general public without a direct person-to-person transfer involving a retail tobacco-dealer or his agent. A vending machine is a form of self-service display.

This section does not apply to retail tobacco stores. For purposes of this section, "retail tobacco store" has the meaning ascribed to the term in Section 7-32-010.

SECTION 3. Section 4-64-191 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-191 Certain transactions prohibited.

No person shall sell, offer for sale, barter or expose for sale any eigarette, tobacco or smokeless tobacco-tobacco product except in its original factory-wrapped package. No person shall sell, offer for sale, barter, or expose for sale any cigarettes in a package containing fewer than 20 cigarettes.

Any person who violates this section shall be subject to Violations of this section involving 40 or fewer cigarettes, or any amount of any tobacco product other than cigarettes, shall be punishable by a fine of \$1,000 00 for a violation involving forty or fewer cigarettes, and \$25.00 per cigarette for a violation involving over forty cigarettes, and an additional \$2,000.00 for the second and each subsequent offense the first offense and \$2,000 for each subsequent offense. Violations of this section involving more than 40 cigarettes shall be punishable by a fine of \$25.00 per cigarette for the first offense and \$50.00 per cigarette for each subsequent offense.

SECTION 4. Section 7-32-010 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

7-32-010 Definitions.

(Omitted text is not affected by this ordinance)

"Electronic cigarette" means any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation. "Electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or under any other product name or descriptor. The term "electronic cigarette" does not include any asthma inhaler or other device that has been specifically approved by the United States Food and Drug Administration.

(Omitted text is not affected by this ordinance)

"Live theatre location" means any building, playhouse, room, hall, or other place utilized by live performers to present artistic representations of real or imagined events in front of a live audience.

<u>"Performance space" means the portion or portions of a live theater location where performances occur. "Performance space" excludes all other portions of live theatre locations, including, but not limited to, hallways, lobbies, and public restrooms.</u>

(Omitted text is not affected by this ordinance)

"Retail tobacco store" means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and related products, and/or electronic cigarettes and related products, and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

"Smoke" or "smoking" means <u>either (1)</u> the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment; or (2) the use of any electronic cigarette.

<u>"Theatre actor" means an individual in the process of presenting an artistic representation of real or imagined events in front of a live audience, or in the process of rehearsing to do the same. The term "theatre actor" applies to both women and men.</u>

SECTION 5. Section 7-32-035 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

7-32-035 Exemptions.

Notwithstanding any other provision of this chapter, smoking is allowed in the following areas:

- (1) Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public.
- (2) Retail tobacco stores as defined in Section 010 of this chapter in operation prior to January 1, 2008. Any retail tobacco store that begins operation after January 1, 2008 may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited Notwithstanding any other provision in this subsection, the use of electronic cigarettes is allowed in any retail tobacco store.
- (3) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

In addition, theatre actors shall be allowed to use nicotine-free electronic cigarettes within performance spaces.

SECTION 6. Sections 1, 2, and 3 of this ordinance shall take effect six months after passage and approval. Following due passage and approval, sections 4 and 5 of this ordinance shall take effect on April 29, 2014.

Edward M Burke Alderman, 14th Ward

William D. Burns Alderman, 4th Ward



CHICAGO January 15, 2014

To the President and Members of the City Council:

Your Joint Committee on Finance and Committee on Health and Environmental Protection having had under consideration

A substitute ordinance amending Chapters 4-64 and 7-32 of the <u>Municipal Code of Chicago</u> regarding e-cigarettes.

SO2013-6160

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

Respectfully submitted

Chairman

Document No	
REPORT OF THE COMMITTEE ON FINANCE TO THE CITY COUNCIL CITY OF CHICAGO	
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